

HOUSE BILL REPORT

HB 2683

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to the creation of a local wine industry association license.

Brief Description: Creating a local wine industry association license.

Sponsors: Representatives Chapman, Jenkin, Wylie, Chambers, Chandler, Tharinger and Kretz.

Brief History:

Committee Activity:

Commerce & Gaming: 1/28/20, 2/4/20 [DPS].

Brief Summary of Substitute Bill

- Establishes the local wine industry association license (association license) that authorizes eligible entities to receive purchased or donated wine for promotional or marketing purposes from domestic and certain out-of-state wineries.
- Provides that entities eligible to receive the association license include nonprofit societies or certain organizations that promote Washington's wine industry.
- Exempts a domestic winery, including its off-site tasting rooms, from the three-tier system "money or moneys' worth" prohibition while participating in an event or marketing program.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Morgan, Ramel, Vick and Young.

Staff: Kyle Raymond (786-7190).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Domestic Winery License.

A domestic winery license issued by the Liquor and Cannabis Board (LCB) authorizes the manufacture of wine in the state. Subject to restrictions, a domestic winery may also act as a distributor and retailer of wine of its own production while complying with the laws applicable to wine distributors and retailers. Domestic winery licensees may take orders and accept payment for wines of its own production during an event held by a nonprofit holding a special occasion license. Also, a domestic winery may qualify for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers' market, subject to restrictions.

Out-of-State Winery Certificate of Approval.

Wineries located outside the state may obtain a certificate of approval to sell and ship wine of the winery's own production to licensed Washington wine distributors, importers, or retailers. A certificate of approval holder with a direct shipment endorsement may act as a distributor of its own production, and endorsement holders may use a common carrier to deliver wine of its own production to licensed Washington retailers, up to 100 cases per month.

Special Occasion Licenses.

A not-for-profit society or organization that obtains a special occasion liquor license may sell spirits, beer, and wine by the individual glass to be consumed on the premises. The special occasion license permits the licensee to serve liquor at a specified event, on a specified date and place. The fee for this license is \$60 per day, and the organization is limited to sales on no more than 12 single-day events per year. Once per year, certain agricultural fairs may count a multiple-day fair as one event.

Under a special occasion license, a "society or organization" means a not-for-profit group organized and operated: (1) solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes; or (2) as a local wine industry association registered under section 501(c)(6) of the Internal Revenue Code as it exists on July 22, 2007.

No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the Washington Secretary of State or the United States Internal Revenue Service as a nonprofit organization is required to submit such registration, upon request, as proof that it is a not-for-profit group.

Three-tier System Prohibition.

Built into the post-prohibition legal framework regulating liquor manufacturing, distribution, and sales is a separation between the three-tiers of the liquor industry: (1) manufacturing; (2) distributing; and (3) retailing. Liquor licensees in the manufacturing and distributing tiers of the industry, and their authorized representatives, are defined as "industry members" for certain purposes in liquor statutes.

There are two primary prohibitions that provide the separation between the tiers of the industry. First, generally, liquor licensees in the manufacturing and distributing tiers are prohibited from having financial interests in a business within the retail tier of the industry,

and vice versa. Secondly, industry members are prohibited from providing "money or moneys' worth," under any type of business practice or arrangement, to a business in the retail tier of the industry. Retailers are similarly prohibited from receiving money or moneys' worth from industry members.

Imposition of Taxes on Sales of Wine and Cider.

The LCB administers the collection of the wine tax. The tax rate for wine varies based on the type of wine sold. Tax rates include \$0.2292 per liter for table wines, \$0.4536 per liter for fortified wines, and \$0.0814 per liter for cider.

Summary of Substitute Bill:

The local wine industry association license (association license) is established. The association license may be issued to a nonprofit society or an organization created with the express purpose of educating consumers on, or promoting the economic development of, the Washington wine industry. The annual fee for the association license is \$700.

An association licensee may purchase or receive donations of wine from domestic winery licensees or out-of-state wineries that are certificate of approval holders. The wine obtained by association licensees may be used for promotional or marketing purposes.

Events or marketing programs conducted by association licensees may be held on domestic winery premises as long as the domestic winery and the association licensee each separately account for the sale of its wine. The domestic winery premises includes the premises of off-site tasting premises under the domestic winery license.

While participating in an event or marketing program conducted by licensees, a domestic winery and its off-site locations are not subject to the "money or moneys' worth" prohibition under the three-tier system requirements.

An association licensee may conduct no more than 12 events per year under the license.

An association licensee must notify the Liquor and Cannabis Board of any event or marketing program conducted under the license at least 45 days prior to the event or start of the marketing program.

Licensees participating in an event or marketing program are jointly responsible for any violation or enforcement issues, unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action.

Licensees are not prohibited from accessing a special occasion license or special permits.

Wine furnished to a nonprofit society under this section is subject to the taxes on sales of wine.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- adds wine certificate of approval holders as a lawful source of wine that may be purchased by or donated to a local wine industry association licensee (association licensee) for promotional or marketing purposes;
- provides that events or marketing programs conducted by an association licensee may also be held on the premises of a winery's additional off-site locations;
- provides that wineries and their off-site winery tasting room locations are not subject to the general prohibition on a liquor manufacturer advancing and a retailer receiving moneys or moneys' worth, but only while participating in an event or marketing program authorized under the new license, rather than exemption only to wineries that are dues-paying members of the local wine industry association;
- modifies the requirement regarding notification to the Liquor and Cannabis Board (LCB) to provide that an association licensee must notify the LCB of any event or marketing program conducted under the license at least 45 days prior to the event or start of the marketing program;
- limits an association licensee to conducting no more than 12 events per year under the license; and
- provides that all licensees participating in an event or marketing program are jointly responsible for any violation or enforcement issues, unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will help streamline events and programs for local wine industry associations. There are approximately 12 local nonprofit associations that provide regional marketing and educational support, and these associations put on events that draw people to the state's wine regions and local wineries. The wine associations help support our local wine economies across the state. An example of an event includes a multi-day wine tour held at tasting rooms around the region.

These events are currently happening, so the bill does not expand access to liquor. The bill is narrowly tailored and gives marketing associations a new, better tool to put on events. Currently, the special occasion license is the only public event license available, and this license is not in alignment with what local wine associations are trying to accomplish. The bill still includes the special occasion license as an option for joint marketing opportunities with breweries and distilleries that do not have any local government opportunities.

This bill is important for local wine associations and the overall Washington wine industry through helping wineries create direct-to-consumer opportunities, which is the lifeblood of the wine industry and supports the success of small rural wineries. The marketing associations help create the opportunity to sell the wine, and the associations raise funds through ticket sales.

The current license requirements are cost-restrictive for small rural associations. The current annual licensing cost is significantly higher than the \$700 license fee contained in the bill.

The most damaging limitation under current requirements is that the special occasion license takes precedence over the tasting room, which is already included under the domestic winery license. This results in licensees having to have two separate tasting areas. Alternatively, the winery would not be allowed to sell its own wine during the licensee's event. With this, if two people came to a wine tour together with only one ticket, the two people would have to go to two separate tasting rooms. This diminishes the experience of the visitors to Washington wineries.

(Opposed) None.

(Other) The Liquor and Cannabis Board (LCB) is not opposed to the objective or the goal of the bill. The LCB has friendly amendments, including requiring a 45-day notice of events to notify local authorities. Also, the LCB proposes the Legislature consider a 12-event-per-year annual limit, which is similar to what is currently authorized under the special occasion license. The LCB would want provisions in the bill that make clear the chain of responsibility regarding who is to be held responsible if a violation occurs at an event.

Persons Testifying: (In support) Representative Chapman, prime sponsor; Josh McDonald, Washington Wine Institute; and Amy Harksell, Olympic Peninsula Winery Association.

(Other) Chris Thompson, Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: None.335